THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.3022 of 1998
Date:04-06-2007

Between:
The Depot Manager, APSRTC,
Kovvur, West Godavari District and another

Petitioners

And

The Presiding Officer, Labour Court,
Guntur, and another

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.3022 of 1998

ORDER:

1. This writ petition is filed by the management of the Andhra Pradesh State Road Transport Corporation (in short 'the APSRTC') calling in question the correctness of the orders passed on 17-08-1996 by the Labour Court, Guntur, in M.P. No.39 of 1991.

2. The second respondent while working as an Assistant Depot Clerk had been proceeded against as a measure of discipline. The order of dismissal passed on 29-11-1971 was also confirmed by the appellate authority on 15-12-1973. But however, the second respondent-workman had taken his own time in initiating the dispute under the Industrial Disputes Act, which he ultimately did in 1980 by raising I.D.No.225 of 1980. The Labour Court considered the matter and passed it's Award on 21-06-1984 directing the management of the APSRTC to reinstate the workman into service with continuity of service, attendant benefits and full back wages. Questioning the correctness of the Award passed in I.D. No. 225 of 1980, the management of the APSRTC had preferred W.P.No.3356 of 1985 before this court. By judgment dated 2nd August, 1988, the learned Single Judge of this court had allowed the writ petition in part holding that the second respondent-workman is responsible for the delay in raising the industrial dispute and consequently held that he will not be entitled for payment of back wages for this period. Accordingly, the writ petition was allowed and the second respondent-workman has been denied back wages for the period from 16-12-1973 to 15-05-1980. For the balance period, the second respondent-workman was declared to be entitled to be paid the back wages. The period for which he was denied the back wages was however, ordered to be treated to be continuing in service. Therefore, the question of computing the quantum of benefits for which the second respondent-workman is entitled had cropped up for consideration. It is said that the management of the APSRTC has deposited a sum of

Rs.51,474.43ps before the Labour Court and the same was permitted to be withdrawn by the second respondent-workman. Notwithstanding the same, the second respondent-workman had filed M.P.No.39 of 1991 invoking the provisions contained in Section 33 C (2) of the Industrial Disputes Act specifically claiming the following amounts as the arrears of amounts payable to him:

Sl. No.	Nature of Benefits	Period	Benefits	Amount	Remarks
(A)	Wages U/s.17-A of I.D.Act 1947	From 27-8-84 to 15th March,1985,6 months 18 days	Not implementation of Award for 6 months 18 days after 30 days of publication.	7,786-50	Nil
(B)	Encashment for 15 days every year	1972-1985;14 yrs	Attendant benefits	4,406-08	Nil
(C)	Uniform allowance	1980-1985: 6 yrs	Attendant benefits	1,200-00	Nil
(D)	Stitching charges	1980-1985	Attendant benefits	90-00	Nil
(E)	Chappal allowance	1972-1985	Attendant benefits	700-00	Nil
(F)	8.33% Exgratia for each year 750/-sealing.	March,1972-March,1985	Attendant benefits	10,405-97	Nil
(G)	Family Planning increments at the 50% rate; allowed as back wages from A.P.High Court	4.12.78 to 14.3.85	50% Back wages benefits including attendant benefits	904-40	Nil
			Total amount	25,492-95ps	

This M.P.No.39/1991 though contested by the writ petitioner herein, is allowed in a sum of Rs.23.044-28ps. It is this order dated 17-08-1996 passed by the Labour Court in Miscellaneous Petition No.39 of 1991 which is challenged in the present writ petition. Though the second respondent-workman has been served, there is no appearance entered on his behalf.

3. I have heard Sri R.Manmadha Reddy, the learned standing counsel for the APSRTC.

4. The principal contention of the learned standing counsel is that the claim made by the second respondent-workman, in particular with reference to encashment of 15 days

of earned leave for each year commencing from 1972 to 1985 is wholly unwarranted and unjust. Similarly the claim made by the second respondent-workman seeking payment of uniform allowance, stitching charges and chappal allowance is also not just and proper. Further, the claim made by the second respondent-workman seeking payment of exgratia at the rate of 8.33% subject to a maximum of Rs.750/- for each year from 1972 to 1985 is also unjust and untenable.

5. It is not in dispute that the APSRTC has framed Employees (Leave) Regulations which enable an employee who had rendered service continuously for a year to earn certain days as leave to his credit. He is also entitled to accumulate the same subject to the limits of ceiling prescribed under the said regulations from time to time. Upon surrender of such earned leave, the employee is also entitled to receive cash equivalent thereto. But the fact remains that the leave regulations framed by the APSRTC enables an employee to earn the leave upon satisfactory rendering continuous service. Without rendering actual and physical service, no employee can earn the leave and consequently the question of accumulating the same also would not arise. In the absence of earning the leave, question relating to it's surrender does not arise. Therefore, the criticism mounted against the orders passed by the Labour Court entertaining the claim at the hands of the second respondent-workman that he is entitled for encashment of earned leave at the rate of 15 days per every year from 1972 to 1985 is well founded. The claim of the workman in this regard is contrary to the Leave Regulations framed by the APSRTC. Therefore, the contention raised on behalf of the writ petitioner in this regard is well merited. The claim made by the second respondent-workman in a sum of Rs.4,406-08 representing the encashment of leave component in the claim petition made by him is untenable. Similarly uniform allowance and the stitching charges thereof and the chappal allowance, which the second respondent-workman had claimed at the rate of Rs.1290/- and Rs.700/- respectively are also equally untenable claims. These allowances are obviously provided for by the APSRTC to enable it's employees to meet the necessity of putting on uniform and chappal while

performing their duties. For the number of years, the employee has been kept out of office or duty albeit due to the orders of removal from service do not enable such a workman to claim such allowances for the said period. Such allowances were obviously intended to cover the expenditure liable to be incurred while performing the duties. Therefore, the claim made by the second respondent-workman in a sum of Rs.1290/- and Rs.700/- respectively on the aforesaid three counts is also not tenable.

6. The management of the APSRTC had taken out circular No.67/1981-82 dated 18-12-1981 clearly indicating that the employees who have been kept out of employment upon their reinstatement are not entitled to the payment of exgratia for the period during which they were out of service unless the conditions specified for payment of exgratia are met with. In view of the stand taken with regard to the conditions subject to which the payment of exgratia will be paid not being the subject matter of adjudication, it is not open to the Labour Court to have entertained the claim in this regard at the hands of the second respondent-workman who solicited a sum of Rs.10,405-97ps towards payment of this exgratia amount. In the absence of adjudication of the tenability of the claim, this amount cannot be treated as payable to the workman. Hence he cannot maintain an application under Section 33 (c) (2) of the Industrial Disputes Act. Therefore, to this extent also, the claim made by the second respondent-workman is not sustainable. To this extent, the above writ petition succeeds and the order passed by the Labour Court in M.P.No. 39 of 1991 stands modified by declaring that the second respondent-workman is entitled to be paid only a sum of Rs.7,786.50ps representing the wages payable for the period of six months 18 days, for not reinstating him in spite of the Award passed by the Labour Court. He is also entitled to be paid only a sum of Rs.904-40ps representing the differential amount of the 50% of the wages, which he was otherwise ordered to be paid during the pendency of W.P.No.3356 of 1985.

6. Subject to the modification above, the writ petition stands allowed in part. No order

as to costs.

_____

NOOTY RAMAMOHANA RAO,J

04-06-2007

Stp